

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, DC 20554**

In re Application of )  
CBS Television Stations, Inc. ) BRCT-20041001AJQ  
for Renewal of WFOR-TV, Miami Florida )

**PETITION TO DENY RENEWAL**

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*Counsel for the United Church of Christ*

December 9, 2004

In re Application of )  
CBS Television Stations, Inc. ) BRCT-20041001AJQ  
for Renewal of WFOR-TV, Miami Florida )

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CBS Television Stations, Inc. and the CBS Television Network are subsidiaries of Viacom, Inc.

## INTRODUCTION

operated WFOR-TV and its other CBS owned and operated stations in the public interest.

cifically, in the viewing area of WFOR-TV.

and other ideas and experiences....” *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).

The Communications Act and the First Amendment also protect UCC's rights to speak to its members and to the public on matters relating to religious expression.

### **THE PETITIONER**

UCC is a Protestant denomination comprised of nearly 6,000 congregations and more than 1.3 million members. As a blend of four distinct Christian traditions -- Congregational, Christian, Evangelical and Reformed -- the UCC includes some of the country's oldest congregations and structures.

UCC churches are located throughout the country, including the Miami, Florida area. Members of these churches include many regular viewers of WFOR-TV and other over the air television stations. Some of these members do not subscribe to cable, DVS or other subscription video programming distribution services.

Exhibit 1 is the declaration of the Rev. John H. Thomas. He attests to the harm to the moral and ethical expression and speech rights which UCC and members of UCC churches have incurred as a result of WFOR-TV's failure to serve the public interest.

The attached Exhibit 2 contains 6 declarations from members of UCC churches located in Florida which attest to their residence, their viewing practices and to the harm that they have incurred as a result of WFOR-TV's failure to serve the public interest.

### **THE FACTS**

In 2002, UCC embarked on an identity campaign under the theme "God is Still Speaking." The advertising campaign is tied to an ambitious program of equipping local church leaders to welcome newcomers into the worship, fellowship and mission life of their congregations, and

moving the national culture from one of division to one of inclusion.<sup>1</sup>

As part of its identity campaign, UCC has produced television advertising spot messages, including one called "Night Club." The "Night Club" spot is intended to reach those who have been alienated or felt rejected from the traditional church, and society in general. UCC believes that this spot sends an important message about the need to include all people. The spot can be viewed online at the following url: <http://www.stillspeaking.com/default.htm>

One reason a campaign like this is important is because programming reflecting the full range of religious, moral and ethical expression in this country is not generally available on over the air television. UCC has purchased time on certain cable networks for the "Night Club" advertisement, but from the beginning it specifically included the over the air networks in its advertising schedule as a matter of justice so that those Americans who cannot afford cable would have access to UCC's message of openness and inclusion.<sup>2</sup>

The "Night Club" spot advertisement was test marketed on 11 stations, including 5 CBS affiliated TV stations, none of which are owned and operated by CBS. There were no clearance issues raised by any of the 11 stations, and no complaints have been received pertaining to the "Night

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<sup>1</sup>Thousands of clergy and lay leaders have been trained, using materials that build on the slogan, "God is Still Speaking," a modern rendition of the farewell by Pilgrim pastor, John Robinson, to his congregation of dissidents who set sail on the Mayflower for the New World. "Do not cling to where Calvin and Luther left us," Robinson said. "God hath yet more light and truth to break forth from God's Holy Word." The Pilgrims are one of the forebear streams of the United Church of Christ

<sup>2</sup>Inasmuch as this is a national campaign, UCC has no interest in placing advertisements on a station by station basis other than for test marketing. It would be impractical, burdensome and expensive to place spots on a station by station basis. It is virtually certain that station-by-station placement would not allow full national coverage. Moreover, for obvious reasons, obtaining placement during appropriate adjacent programming is extremely important to UCC; this would not be possible in negotiating station by station buys.

Club” ad since it ran on those stations.

In November, 2004, UCC was informed by its advertising agency that the CBS network had raised questions about its willingness to carry the “Night Club” spot. After further discussions, CBS informed UCC’s advertising agency that it would not carry the advertisement. UCC requested documentation of this refusal, and CBS faxed the memo which is attached as Exhibit 2 to the Thomas declaration.

The memo is a “Program Practices Commercial Clearance Report” form from Robert L. Lowary and addressed to UCC’s ad agency representative. It states in relevant part that

CBS/UPN Network policy precludes accepting advertising that touches on and/or takes a position on one side of a current controversial issue of public importance. Because this commercial touches on the exclusion of gay couples and other minority groups by other individuals and organizations, and the fact that the Executive Branch has recently proposed a Constitutional Amendment to define marriage as a union between a man and a woman, this spot is unacceptable for broadcast on the Networks.

#### **ARGUMENT**

WFOR-TV’s failure to present perspectives on the variety of ethically and value based expression in the United States and in the Miami market, combined with the refusal to sell time to UCC for the carriage of an advertisement explaining UCC’s perspective on the social, ethical and moral justice dimensions of inclusion, raises serious questions as to whether grant of the WFOR-TV application for renewal is in the public interest.

UCC maintains that, under the facts here, WFOR-TV improperly failed to recognize that UCC had a limited right of access for the purchase of time.

This petition is *not* based on rights conferred by the fairness doctrine.<sup>3</sup> Rather, this petition is based on the policies inherent in the public interest standard of the Communications Act. As the Supreme Court has emphasized, “the ‘public interest’ in broadcasting clearly encompasses the presentation of vigorous debate of controversial issues of importance and concern to the public;...” *Red Lion Broadcasting Co. v. FCC*, 395 U.S. at 385.

There is no FCC or judicial case which has determined the scope of viewers’ rights to purchase time for the carriage controversial issues under the public interest standard in the absence of the Fairness Doctrine.

*CBS v. Democratic National Committee*, 412 U.S. 94 (1973) (“*DNC*”), is frequently cited for the proposition that citizens do not have the right to purchase air time for the discussion of controversial issues. That case, however, arose under an entirely different legal regime, and the Supreme Court’s decision was explicitly based on the existence of the fairness doctrine.

In *DNC*, an organization of businessmen and a political party sought to purchase time to present long form programming and spot advertisements on controversial issues, including the war in Vietnam, without regard to whether the stations had otherwise complied with the Fairness Doctrine. The FCC ruled that broadcasters were not obligated to sell airtime for such purposes. The U.S. Court of Appeals reversed the FCC, holding that a flat refusal to sell editorial advertisements violates the First Amendment. *Business Executives’ Move For Vietnam Peace v. FCC*, 450 F.2d 642

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<sup>3</sup>The Commission has stopped enforcing the fairness doctrine. See *Syracuse Peace Council*, 2 FCCRcd. 5043 (1987), *aff’d sub nom. Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1989). As a separate matter unrelated to this petition, UCC believes that the fairness doctrine is statutorily mandated. *DNC*, 412 U.S. at 110 n.8; *Red Lion Broadcasting Co. v. FCC*, 395 U.S. at 380; *Maier v. FCC*, 735 F.2d 220, 225 n.4 (7<sup>th</sup> Cir. 1984); *Arkansas AFL-CIO v. FCC*, 11 F.3d 1430, 1443 (8<sup>th</sup> Cir. 1993) (Gibson, J. dissenting). But see, *TRAC v. FCC*, 801 F.2d 501 (D.C. Cir. 1986).

(D.C. Cir.1971). The Supreme Court reinstated the FCC's decision, holding that there is no statutory or First Amendment right to buy time for discussion of issues under the circumstances presented.

The Supreme Court's decision made it clear that licensees have an obligation to present, and not to suppress, speech about controversial issues. Quoting from the FCC's own decision in the case, the Supreme Court affirmed that

The most basic consideration in this respect is that the licensee cannot rule off the air coverage of important issues or views because of his private ends or beliefs. As a public trustee, he must present representative community views and voices on controversial issues which are of importance to his listeners....This means also that some of the voices must be partisan. A licensee policy of excluding partisan voices and always itself presenting views in a bland, inoffensive manner would run counter to the 'profound national commitment that debate on public issues should be uninhibited, robust, and wide-open.' *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964); see also *Red Lion Broadcasting Co., Inc., v. FCC*, 395 U.S. 367, 392 (n. 18) (1969)....

*DNC*, 412 U.S. at 111-112, quoting *Democratic National Committee*, 25 FCC2d 216, 222-223 (1970).

Reviewing the policies then in place, the Court found that that there was no need to require the sale of time because compliance with the Fairness Doctrine was the means that the FCC used to assure that the public received access to discussion of controversial issues and to varying points of view on those issues. *DNC*, 412 U.S. at 110-14.<sup>4</sup> For this reason, Chief Justice Burger concluded

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<sup>4</sup>See also, *Id.* at 147 (White, J., concurring)("Congress intended that the Fairness Doctrine be complied with, but it also intended that broadcasters have wide discretion with respect to the method of compliance. There is no requirement that broadcasters accept editorial ads; they could, instead, provide their own programs, with their own format, opinion and opinion sources."); *Id.* at 178 (Brennan, J., dissenting)("The Court maintains that, in light of the Fairness Doctrine, there simply is no reason to allow individuals to purchase advertising time for the expression of their own views on public issues.")

that “under the Fairness Doctrine broadcasters are responsible for providing the listening and viewing public with access to a balanced presentation of information on issues of public importance...,” *DNC*, 412 U.S. at 113 (footnotes omitted), and that “[c]onsistent with that philosophy, the Commission on several occasions has ruled that no private individual or group has a right to command the use of broadcast facilities.” *Id.*

This case presents entirely different circumstances. Correctly or not, the FCC has abandoned the Fairness Doctrine, and no longer has any policy which requires broadcasters to carry controversial programming at all, much less any policy which assures that the public has access to debate offering opposing points of view on such issues.

The *DNC* Court did consider the possibility that there might be circumstances when opposing views were not available to the public.. Having noted that broadcasters are generally afforded broad discretion in programming judgments, the Court did contemplate that when this discretion is abused in contravention of the public’s right to have such access, the Commission would have to take remedial action:

Only when the interests of the public are found to outweigh the private journalistic interests of the broadcasters will government power be asserted within the of the Act. License renewal proceedings, in which the listening public can be heard, are a principal means of such regulation. See *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994 (1966), and 425 F.2d 543 (1969).

*DNC*, 412 U.S. at 110.

UCC maintains that this is the kind of case that the Supreme Court had in mind when it said that the license renewal process is the appropriate mechanism to deal with the failure to meet the programming needs of the public. In the absence of the Fairness Doctrine, the Commission must now craft another approach to deal with the flat refusal to carry speech on controversial issues and



to educate and inform the viewing public on such issues. Significantly, one remedy the Supreme Court contemplated was affording a limited right of access to group such as UCC. Discussing such rights of access, the Court said that

Conceivably at some future date Congress or the Commission - or the broadcasters - may devise some kind of limited right of access that is both practicable and desirable.

*DNC*, 412 U.S. at 131.<sup>5</sup> Thus, the Commission need not await legislation to craft a limited right of access. Rather, as was held in *DNC*,

Congress has chosen to leave such questions with the Commission, to which it has given the flexibility to experiment with new ideas as changing conditions require.

*DNC*, 412 U.S. at 122-23.

The licensee has failed its obligations to the public. There is no FCC policy which assures UCC that its viewpoints on religious expression will be carried, or that its members and other viewers will have access to those perspectives in the programming on WFOR-TV or on other stations in the Miami market. Accordingly, this license renewal proceeding is the right place, and this is the right time, to address WFOR-TV's failure to serve the public interest.

### CONCLUSION

WFOR-TV and the commonly owned CBS Television Network have followed a programming policy which is contrary to the public interest. The Commission should recognize a limited right of access under the circumstances presented here, designate a hearing to consider whether grant

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<sup>5</sup>For example, Congress has enacted one such limited access provision as Section 312(a)(7) of the Communications Act. *See CBS, Inc. v. FCC*, 453 U.S. 367 (1981)(upholding the constitutionality of Section 312(a)(7)).

of the WFOR-TV renewal application is in the public interest, and grant all such other relief as may be just and proper.

Respectfully submitted,

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600 New Jersey Avenue, NW  
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*Counsel for the United Church of Christ*

December 9, 2004

# Attachment A

Declaration of the Rev. John H. Thomas

Page 1 of 2

**Declaration of the Rev. John H. Thomas**

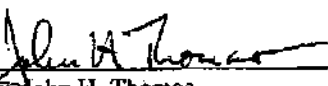
1. My name is the Rev. John H. Thomas. I am General Minister and President of the United Church of Christ ("UCC").
2. The UCC is a Protestant denomination comprised of nearly 6,000 congregations and more than 1.3 million members.
3. This declaration is prepared in support of petitions to deny the license renewal of stations WFOR-TV and WTVJ-TV. I have reviewed these petitions and the factual assertions contained in them are true to the best of my knowledge.
4. In 2002, UCC embarked on an identity campaign under the theme "God is Still Speaking." As part of this campaign, UCC has produced television advertising spot messages, including one called "Night Club." The "Night Club" spot is intended to reach those who have been alienated or felt rejected from the traditional church.
5. One reason a campaign like this is important is because programming reflecting the full range of religious expression in this country is not generally available on over the air television. UCC has purchased time on certain cable networks for the "Night Club" advertisement, but from the beginning it specifically included the over the air networks in its advertising schedule as a matter of justice so that those Americans who cannot afford cable would have access to UCC's message.
6. The "Night Club" spot advertisement was test marketed on 5 CBS and 6 NBC affiliated TV stations. There were no clearance issues raised by any of the 11 stations, and no complaints have been received pertaining to the "Night Club" ad since it ran on those stations.
7. In November 2004, I was informed by UCC's advertising agency that both NBC and CBS had raised questions about their willingness to carry the "Night Club" spot.
8. UCC requested documentation of the networks' refusal to carry the "Night Club" spot. NBC faxed the memo, which is attached as Exhibit A to this declaration. CBS faxed the memo, which is attached as Exhibit B to this declaration.
9. UCC is deeply disappointed that CBS and NBC have declined to carry the "Night Club" spot and still hopes that a reconciliation is possible so that UCC's message can be carried on the two networks.
10. UCC is harmed by the networks' failure to carry its advertisement. Its rights of religious, ethical and moral expression and those of members of UCC churches have been harmed because the refusal to carry the "Night Club" ad limits UCC's ability to invite those who have been alienated or felt rejected to join members of the UCC in worship.

Page 2 of 2

11. UCC's rights of religious, ethical and moral expression and those of members of UCC churches have also been harmed because the refusal to carry the "Night Club" ad limits UCC's ability to communicate with the members of UCC churches.
12. UCC's right to speak to those who have been alienated or felt rejected has been harmed by the refusal of NBC and CBS to carry the "Night Club" ad.
13. The right of members of UCC churches and other citizens to have access to diverse programming has been harmed by the refusal of NBC and CBS to carry the "Night Club" ad as well as by their failure to carry programming reflecting the full range of religious expression in the United States on their networks and on their owned and operated stations.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 8th day of December, 2004.

  
\_\_\_\_\_  
The Rev. John H. Thomas

**EXHIBIT 1**  
**TO**  
**DECLARATION OF THE REV. JOHN H. THOMAS**  
**Memorandum from NBC**

CLIENT/PRODUCT	TITLE	LENGTH
United Church of Christ	Night Club	:30

ENCLOSED FOR THE ABOVE:

☐ STORYBOARD☒ SCRIPT☐ AS PRODUCED SCRIPT☒ VTR - FINAL SPOT☐ SUBSTANTIATION☐ OTHER

Jena Stadlander  
Account Coordinator  
Phone: 212-414-7047  
Fax: 212-414-7109

*Too controversial*

NOT APPROVED...TERMIN SCHEDULING  
ARRANGE MUST AWAIT  
RECEIPT OF PRODUCT SAMPLE  
PACKAGE AND INSTRUCTIONS  
REVISIONS AS INDICATED  
SATISFACTORY SUBSTANTIATION  
OF UNDERLINED CLAIMS  
PRODUCER'S AFFIDAVIT  
TESTIMONIAL AFFIDAVIT/RELEASE  
VIEWING COMPLETED FINAL TAPE & AS PRODUCED  
SCRIPT  
EDITOR  
Theda Browdy  
Ph: 212-664-3961  
Fax: 212-664-6366  
E: Theda.Browdy@NBC.Com

100 FIFTH AVENUE • NEW YORK, NEW YORK 10011 • TEL: (212) 414-7000 • FAX: (212) 414-7095

Response From NBC

**EXHIBIT 2**

**TO**

**DECLARATION OF THE REV. JOHN H. THOMAS**

**Memorandum from CBS**



DEC-05-2004 SUN 04:23 PM P10  
INVT-24-2004 REV 01-16 FR

FAX NO. 216 736 2223

P. 02



# CBS TELEVISION NETWORK

A Unit of CBS Broadcasting Inc., 51 West 52 Street, New York, NY 10019 (212) 975-4321  
PROGRAM PRACTICES COMMERCIAL CLEARANCE REPORT

03/03/04

TO: Ms. Jessi Stadlander  
(Via Fax)

FAX TO:  
212-614-7109

Product:  
United Church of Christ  
Subject:  
Institutional

FROM: ROBERT L. LOWARY/212-975-3306  
REGARDING MATERIALS SUBMITTED FOR APPROVAL:  
VIDEOCASSETTE/SCRIPT:

RECEIVED:  
FEB 19, 2004

ISCI  
XYLC 4301 "NIGHT CLUB"

TITLE

LENGTH  
:30

<input type="checkbox"/> APPROVED FOR BROADCAST		<input type="checkbox"/> NO APPARENT CONCERNS, AWAITING CASSETTE & J AS-PRODUCED SCRIPTS	
<input type="checkbox"/> SUBSTANTIATION REQUESTED AS NOTED BELOW		<input type="checkbox"/> REVISION REQUESTED AS NOTED BELOW	
<b>SCHEDULING DIRECTIONS:</b>			
<input type="checkbox"/> GENERAL <input checked="" type="checkbox"/> ADULT <input type="checkbox"/> FAMILY		<input type="checkbox"/> CELEBRITY:	
<input type="checkbox"/> NEW:		<input type="checkbox"/> COMPARATIVE PRODUCT ID:	
<input type="checkbox"/> PHONE NUMBER:		<input type="checkbox"/> SECONDARY PRODUCT ID:	
<input type="checkbox"/> TIME RESTRICTIONS:		<input type="checkbox"/> CLOSED CAPTIONING: DUAL MODE	
<input type="checkbox"/> OFFER/CONTEST			
<input type="checkbox"/> VIDEOCASSETTE / TAPE RETURNED			
<b>COMMENTS:</b>			
FOR CBS USE ONLY: <input checked="" type="checkbox"/> RC, <input type="checkbox"/> SC, <input type="checkbox"/> SL, <input type="checkbox"/> SB, <input type="checkbox"/> RV, <input type="checkbox"/> PS, <input type="checkbox"/> LJ, <input type="checkbox"/> AF, <input type="checkbox"/> RL, <input type="checkbox"/> NI, <input type="checkbox"/> OT, <input type="checkbox"/> DL, <input type="checkbox"/> SR, <input type="checkbox"/> LA, <input type="checkbox"/> CA			

## APPROVAL WITHHELD

CBS/UPN Network policy precludes accepting advertising that touches on and/or takes a position on one side of a current controversial issue of public importance. Because this commercial touches on the exclusion of gay couples and other minority groups by other individuals and organizations, and the fact that the Executive Branch has recently proposed a Constitutional Amendment to define marriage as a union between a man and a woman, this spot is unacceptable for broadcast on the Networks.

While moot, we must advise that CBS/UPN does accept advertising from churches and religious organizations which deliver secular messages that are beneficial to society in general. Nevertheless, advertising that proselytizes on behalf of any single religion is not acceptable. In our view, this commercial does proselytize.

### PLEASE NOTE:

- CBS reserves the right to withdraw approval or restrict scheduling at any time.
- This report may not be released to any third party without prior written consent of CBS Program Practices.

*CC-Conf*

\*\*\* TOTAL PAGE 01 \*\*\*

# Attachment B

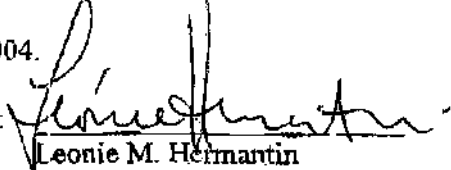
Declarations of Florida Viewers

Declaration of Leonie M. Hermantin

- 1 My name is Leonie M. Hermantin. I am a resident of Miami, Florida. I am a member of the United Church of Christ through membership in the Coral Gables Congregational United Church of Christ in Coral Gables, Florida.
- 2 I reside within the service area of stations WFOR-TV (Channel 4) and WJVT-TV, of Miami, and regularly view these and other local over-the-air television stations.
- 3 I am aware that the United Church of Christ has attempted to purchase advertising on the NBC and CBS television networks, and that these networks are commonly owned by the companies which own WTVJ-TV and WFOR-TV, respectively. This advertising was intended to inform the public that the United Church of Christ welcomes everyone.
4. It is my impression that, individually and collectively, the Miami area over the air television stations available to me do not portray the full range of religious expression in this country and in this area and that, in particular, they do not carry programming which indicates that there are denominations such as the United Church of Christ which invite all people to worship in their churches.
5. My rights of religious expression have been harmed by the inability of my denomination to invite others to join me in worship as part of the United Church of Christ.
6. My rights of religious expression have been harmed by the inability of my denomination to speak to me through its television advertisement.
7. My right to have access to diverse programming has been harmed by the refusal of the NBC and CBS networks to carry the United Church of Christ's advertisement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 7th day of December, 2004.

Signature: 

Leonie M. Hermantin

Declaration of the Rev. Dianne Hudder

1. My name is the Rev. Dianne Hudder. I am a resident of Miami, Florida. I am a member of the United Church of Christ through membership in the Christ Congregational United Church of Christ in Palmetto Bay, Florida.
2. I reside within the service of area of stations WFOR-TV (Channel 4) and ~~WTVT-TV~~ <sup>WTVJ</sup> ~~WTVT-TV~~, of Miami, and regularly view these and other local over-the-air television stations.
3. I am aware that the United Church of Christ has attempted to purchase advertising on the NBC and CBS television networks, and that these networks are commonly owned by the companies which own WTVJ-TV and WFOR-TV, respectively. This advertising was intended to inform the public that the United Church of Christ welcomes everyone.
4. It is my impression that, individually and collectively, the Miami area over the air television stations available to me do not portray the full range of religious expression in this country and in this area and that, in particular, they do not carry programming which indicates that there are denominations such as the United Church of Christ which invite all people to worship in their churches.
5. My rights of religious expression have been harmed by the inability of my denomination to invite others to join me in worship as part of the United Church of Christ.
6. My rights of religious expression have been harmed by the inability of my denomination to speak to me through its television advertisement.
7. My right to have access to diverse programming has been harmed by the refusal of the NBC and CBS networks to carry the United Church of Christ's advertisement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 7th day of December, 2004.

Signature: Rev. Dianne Hudder  
The Rev. Dianne Hudder

Declaration of the Rev. Steven Hudder

1. My name is the Rev. Steven Hudder. I am a resident of Miami, Florida. I am a member of the United Church of Christ through membership in the Christ Congregational United Church of Christ in Palmetto Bay, Florida.
2. I reside within the service of area of stations WFOR-TV (Channel 4) and ~~WTVT~~ <sup>WTVT</sup> TV, of Miami, and regularly view these and other local over-the-air television stations.
3. I am aware that the United Church of Christ has attempted to purchase advertising on the NBC and CBS television networks, and that these networks are commonly owned by the companies which own WTVJ-TV and WFOR-TV, respectively. This advertising was intended to inform the public that the United Church of Christ welcomes everyone.
4. It is my impression that, individually and collectively, the Miami area over the air television stations available to me do not portray the full range of religious expression in this country and in this area and that, in particular, they do not carry programming which indicates that there are denominations such as the United Church of Christ which invite all people to worship in their churches.
5. My rights of religious expression have been harmed by the inability of my denomination to invite others to join me in worship as part of the United Church of Christ.
6. My rights of religious expression have been harmed by the inability of my denomination to speak to me through its television advertisement.
7. My right to have access to diverse programming has been harmed by the refusal of the NBC and CBS networks to carry the United Church of Christ's advertisement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 7th day of December, 2004.

Signature:

  
The Rev. Steven Hudder

## Declaration of Judith W. Feldman

1. My name is Judith W. Feldman. I am a resident of Miami, Florida. I am a member of the United Church of Christ through membership in the First Church of North Miami Congregational United Church of Christ in North Miami, Florida.
2. I reside within the service of area of stations WFOR-TV (Channel 4) and WJVT-TV, of Miami, and regularly view these and other local over-the-air television stations.
3. I am aware that the United Church of Christ has attempted to purchase advertising on the NBC and CBS television networks, and that these networks are commonly owned by the companies which own WTVJ-TV and WFOR-TV, respectively. This advertising was intended to inform the public that the United Church of Christ welcomes everyone.
4. It is my impression that, individually and collectively, the Miami area over the air television stations available to me do not portray the full range of religious expression in this country and in this area and that, in particular, they do not carry programming which indicates that there are denominations such as the United Church of Christ which invite all people to worship in their churches.
5. My rights of religious expression have been harmed by the inability of my denomination to invite others to join me in worship as part of the United Church of Christ.
6. My rights of religious expression have been harmed by the inability of my denomination to speak to me through its television advertisement.
7. My right to have access to diverse programming has been harmed by the refusal of the NBC and CBS networks to carry the United Church of Christ's advertisement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 7th day of December, 2004.

Signature:

  
Judith W. Feldman

Declaration of the Rev. Garth Thompson

1. My name is the Rev. Garth Thompson. I am a resident of Miami Beach, Florida. I am a member of the United Church of Christ through membership in the Miami Beach Community United Church of Christ in Miami Beach, Florida.
2. I reside within the service of area of stations WFOR-TV (Channel 4) and WJVT-TV, of Miami, and regularly view these and other local over-the-air television stations.
3. I am aware that the United Church of Christ has attempted to purchase advertising on the NBC and CBS television networks, and that these networks are commonly owned by the companies which own WTVJ-TV and WFOR-TV, respectively. This advertising was intended to inform the public that the United Church of Christ welcomes everyone.
4. It is my impression that, individually and collectively, the Miami area over the air television stations available to me do not portray the full range of religious expression in this country and in this area and that, in particular, they do not carry programming which indicates that there are denominations such as the United Church of Christ which invite all people to worship in their churches.
5. My rights of religious expression have been harmed by the inability of my denomination to invite others to join me in worship as part of the United Church of Christ.
6. My rights of religious expression have been harmed by the inability of my denomination to speak to me through its television advertisement.
7. My right to have access to diverse programming has been harmed by the refusal of the NBC and CBS networks to carry the United Church of Christ's advertisement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 7th day of December, 2004.

Signature:

  
The Rev. Garth Thompson

**Declaration of Don Marx**

1. My name is Don Marx. I am a resident of Miami, Florida. I am a member of the United Church of Christ through membership in the Christ Congregational United Church of Christ in Palmetto Bay, Florida.
2. I reside within the service of area of stations WFOR-TV (Channel 4) and WJVT-TV, of Miami, and regularly view these and other local over-the-air television stations.
3. I am aware that the United Church of Christ has attempted to purchase advertising on the NBC and CBS television networks, and that these networks are commonly owned by the companies which own WTVJ-TV and WFOR-TV, respectively. This advertising was intended to inform the public that the United Church of Christ welcomes everyone.
4. It is my impression that, individually and collectively, the Miami area over the air television stations available to me do not portray the full range of religious expression in this country and in this area and that, in particular, they do not carry programming which indicates that there are denominations such as the United Church of Christ which invite all people to worship in their churches.
5. My rights of religious expression have been harmed by the inability of my denomination to invite others to join me in worship as part of the United Church of Christ.
6. My rights of religious expression have been harmed by the inability of my denomination to speak to me through its television advertisement.
7. My right to have access to diverse programming has been harmed by the refusal of the NBC and CBS networks to carry the United Church of Christ's advertisement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 7th day of December, 2004.

Signature:

Don Marx





## **CERTIFICATE OF SERVICE**

I, Paula Galloway, certify that, on this 9<sup>th</sup> day of December 2004, I caused to be served upon the parties listed below by first class mail, postage prepaid, copies of the foregoing *Petition to Deny* to the following:

Michael Colleran  
President and General Manager  
WFOR-TV  
8900 NW 18th Terrace  
Miami, Florida 33172

Edwin L. Nass  
CBS Television Stations Inc.  
Suite 725  
2000 K Street, NW  
Washington, DC 20006

---

Paula Galloway

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In re:	)	
	)	
Application of CBS Television Stations, Inc.	)	BRCT-20041001AJQ
for Renewal of License of	)	
WFOR-TV, Miami Florida	)	

**OPPOSITION OF CBS TELEVISION STATIONS INC TO PETITION TO DENY**

CBS Television Stations Inc. ("CBS" or "Licensee") hereby submits its opposition to a petition to deny the license renewal application of WFOR-TV, Miami, Florida (the "Petition"), filed by the Office of Communication of the United Church of Christ ("UCC" or "Petitioner").

The Petition is based solely on UCC's chagrin that an editorial advertisement that it proffered for broadcast was not accepted by the CBS Television Network, which is under common ownership with the Licensee.<sup>1</sup> As discussed below, WFOR did not refuse to run UCC's advertisement; on the contrary, UCC was expressly invited to submit that message for consideration by WFOR and other Viacom-owned television stations. Thus

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<sup>1</sup> Both the CBS Television Network and WFOR-TV are ultimately owned by Viacom Inc. WFOR-TV operates as part of the Viacom Television Stations Group, which owns 39 television stations nationally.

the conduct to which UCC objects does not even concern the station whose license is up for renewal, a fact that in itself compels dismissal of the Petition.<sup>2</sup>

Moreover, Petitioner does not even attempt to argue that the network's rejection of its ad constitutes a "serious violation" of the Communications Act or the FCC's rules -- thereby implicitly conceding that it cannot meet the requirements of Section 309 of the Act for stating a *prima facie* case against renewal.<sup>3</sup> Of course, the instant facts do not involve *any* violation of the Act or rules, serious or trivial, isolated or part of a pattern or practice. To the contrary, the CBS Television Network's rejection of Petitioner's ad involves nothing more than the "selection and choice of material" that the U.S. Supreme Court has found to be at the heart of the editorial function, and thus protected by the Communications Act and the First Amendment.<sup>4</sup>

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<sup>2</sup> Section 309 (k) of the Communications Act directs that the Commission shall grant a station's application for license renewal "if it finds, *with respect to that station*," that

(A) the station has served the public interest, convenience, and necessity;

(B) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and

(C) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.

47 USC § 309 (k) (emphasis added).

<sup>3</sup> See, 47 USC § 309 (d), (k).

<sup>4</sup> See, *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 124 (1973) ("For better or worse, editing is what editors are for; and editing is selection and choice of material. That editors -- newspaper or broadcast -- can and do abuse this power is beyond doubt, but that is no reason to deny the discretion Congress provided.") See also *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).

## **BACKGROUND**

In November 2004, UCC submitted the advertisement in question, titled "Night Club," to the CBS Television Network. The announcement depicts would-be worshipers approaching a church, access to which is impeded by a velvet rope attended by two muscular, black-clad "bouncers." Two men, briefly seen to be holding hands, approach and are brusquely turned away by the bouncers with the words "no, step aside please." After the rope is unhooked to admit a white, heterosexual couple, the bouncers stop a Hispanic-appearing young man, telling him "no way, not you." Next they deny entrance to an African-American young woman, saying to her sarcastically "I don't think so." A superimposed message then appears against a black background, stating "Jesus didn't turn people away ... Neither do we." The announcement ends with several shots of diverse congregants (including an elderly couple, a black couple and a lesbian couple) and a voice-over message emphasizing that the United Church of Christ welcomes all.

The CBS Television Network declined to accept this commercial, citing its policy against editorial advertising. However, in subsequent conversations with two officials of the UCC, Dennis Swanson, Chief Operating Officer of the Viacom Television Stations Group ("VTSG"), invited UCC to submit the commercial to individual Viacom owned stations, including WFOR-TV. This offer reflected VTSG's policy to leave decisions as to whether to accept particular editorial advertisements to the individual discretion of each station. Despite Mr. Swanson's offer, the commercial was never submitted to WFOR.

Although seemingly at odds, the independently-determined policies of the CBS Television Network and the Viacom Television Stations Group with respect to editorial

advertising reflect similar considerations. Both policies stem from a belief that decisions as to the acceptability of commercials that some viewers might find controversial or offensive are best made on a local level, by managers whose job it is to know their communities. This view underlies the CBS Television Network's policy of not accepting editorial advertisements, since doing so would effectively determine, for each of some 190 independently-owned affiliated stations, whether potentially sensitive national ads would appear locally on their air.<sup>5</sup> On the other hand, since no risk of compromising local autonomy is presented when spot buys are made individually on the Viacom owned television stations, the Viacom Television Stations Group has no general policy against accepting issue advertising.

Petitioner complains that these policies do not ideally suit its advertising strategy.<sup>6</sup> Be that as it may, they are entirely consistent with FCC policy and the Communications Act, and the editorial freedom for broadcasters that both are intended to foster.

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<sup>5</sup> The UCC commercial at issue illustrates why the CBS Television Network believes it appropriate that such decisions be made on the local level, rather than by a national network. While everyone may applaud the message of inclusiveness in the UCC spot, a broadcaster would not be unreasonable to think that some viewers might see in it as having less benign implications. For instance, might members of a denomination opposed to gay marriage see in the spot an offensive suggestion that their church's beliefs were tantamount to refusing spiritual succor to individuals in need, in a manner fundamentally incompatible with Christian tenets? Might members of that church also feel that they were being unjustly tarred with the brush of racism? The point is not whether such interpretations would be warranted, but that the issues raised by editorial commercials of this kind can be extremely sensitive. The CBS Television Network's policy of leaving decisions as to whether to air such spots to the respective managements of its local affiliates can thus hardly be characterized as arbitrary.

<sup>6</sup> See Petition at 3, n.2.

## ARGUMENT

As noted above, UCC does not contend that any existing FCC rule or policy requires a broadcaster to accept editorial advertisements. Nor does it claim the airing of such commercials is compelled by any specific provision of the Communications Act, apart from its assertion that such a mandate is "inherent in the public interest standard."<sup>7</sup> Under Section 309 of the Act, Petitioner's failure to allege specific violations of the statute or the Commission's rules is fatal to its claims.<sup>8</sup>

Nor is this the proper setting for the Commission to announce previously unspecified components of the public interest standard. The appropriate forum for the adoption of new rules and policies is a notice-and-comment rulemaking proceeding, not an adjudication concerning the qualifications of an individual applicant for license renewal.

Thus in *California Association for the Physically Handicapped v. FCC*,<sup>9</sup> the U.S. Court of Appeals for the D.C. Circuit strongly endorsed the Commission's refusal to permit the adjudicatory process to be used as a substitute for rulemaking. In that case, an organization representing the physically handicapped filed a petition to deny the license

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<sup>7</sup> *Id.*

<sup>8</sup> Section 309 (d) requires that a petition to deny "contain specific allegations of fact sufficient to show that . . . a grant of the application would be prima facie inconsistent with . . . subsection (k) in the case of renewal of any broadcast station license." As indicated above, *see* note 2 *supra*, subsection (k) requires the Commission to grant renewal if it finds that the station in question "has served the public interest, convenience, and necessity"; that "there have been no serious violations by the licensee of th[e] Act or the rules and regulations of the Commission"; and that "there have been no other violations by the licensee of th[e] Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse." 47 USC § 309 (d), (k).

<sup>9</sup> 840 F.2d 88 (D.C. Cir. (1988) (hereafter "*California Association*").

renewal applications of all Los Angeles television stations on the ground, *inter alia*, that they had failed to caption a sufficient number of their programs for the hearing impaired.<sup>10</sup> Finding that license renewal proceedings were an inappropriate setting for establishing a captioning requirement, the Commission dismissed the petition and granted the applications. The Court of Appeals affirmed, noting that

The Commission has repeatedly taken the position that adjudicatory proceedings are an inappropriate forum for promulgating captioning requirements because of the arbitrariness of retroactive application and the inherent constraints of the adjudicatory process. The Supreme Court [has] upheld this approach ... stating that "rulemaking is generally a 'better, fairer, and more effective' method of implementing a new industry-wide policy than is the uneven application of conditions in isolated license renewal proceedings."<sup>11</sup>

But even if a license renewal proceeding were thought to be an appropriate vehicle for considering Petitioner's arguments, it is clear that they are without substantive merit. Indeed, Petitioner's claim that a right inheres in the Communications Act to purchase time on a broadcast station for editorial advertising has already been expressly rejected by the Supreme Court.

Thus, in *Columbia Broadcasting System, Inc. v. Democratic National Committee*,<sup>12</sup> the Court held that neither the Act nor First Amendment affords such a

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<sup>10</sup> Since the court's decision in *California Association*, the Commission has adopted rules concerning the captioning of programming for hearing-impaired viewers. See, *Report and Order, In the Matter of Closed Captioning and Video Description of Video Programming*, MM Docket No. 95-176, 13 FCC Rcd 3272 (1997).

<sup>11</sup> 840 F.2d at 97 (citations omitted).

<sup>12</sup> 412 U.S. 94 (1973) (hereafter "*CBS v. DNC*").

right. The Court noted that Congress had “time and again rejected various legislative attempts that would have mandated a variety of forms of individual access,” choosing instead “to leave such questions with the Commission.”<sup>13</sup> As the Court observed, “Congress specifically dealt with -- and firmly rejected -- the argument that the broadcast facilities should be open on a nonselective basis to all persons wishing to talk about public issues.”<sup>14</sup>

Petitioner’s efforts to avoid the dispositive effect of the Court’s decision in *CBS v. DNC* are unavailing. Seeking to distinguish the case, Petitioner argues that the existence of the fairness doctrine, which the Commission has since repealed, was central to the *DNC* holding. This argument in turn rests on an attempt to transform the Court’s discussion of the fairness doctrine, as an aspect of the regulatory scheme it upheld in *DNC*, into a necessary condition of its decision. Given the Court’s emphatic finding that Congress “time and again” rejected the creation of access rights in originally adopting the Communications Act of 1934 – the enactment of which preceded by some 15 years the Commission’s first enunciation of the fairness doctrine<sup>15</sup> – this interpretation plainly makes no sense.

Indeed, the U.S. Court of Appeals for the D.C. Circuit has already expressly rejected attempts to discover in the Communications Act implicit requirements akin to those of the fairness doctrine – and those asserted here by Petitioner. Thus, in upholding

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<sup>13</sup> *Id.* at 122.

<sup>14</sup> *Id.* at 105. To the contrary, the Court found it “clear that Congress intended to permit private broadcasting to develop with the widest journalistic freedom consistent with its public obligations.” *Id.* at 110.

<sup>15</sup> *See, Report on Editorializing by Broadcast Licensees*, 13 FCC 1246 (1949).



the Commission's decision to eliminate the fairness doctrine in *Syracuse Peace Council v. FCC*,<sup>16</sup> the Court noted that no party had suggested that the doctrine was constitutionally compelled; likewise, it found that its prior decision in *Telecommunications Research & Action Center v. FCC* ("TRAC")<sup>17</sup> precluded any contention that the doctrine was statutorily mandated. In so holding, the Court also rejected the claim of some parties that the public interest standard of the Communications Act necessarily included the fairness doctrine, finding this argument to be "in essence an effort to ask this panel to overturn *TRAC*."<sup>18</sup>

Petitioner asks the FCC to engage in similar self-contradiction when it assures the Commission that its claim "is *not* based on . . . the fairness doctrine" (emphasis in the original),<sup>19</sup> and then proceeds to posit a supposed obligation that is completely indistinguishable from it. Thus Petitioner asserts that "[i]n the absence of the Fairness Doctrine, the Commission must now craft another approach to deal with the flat refusal to carry speech on controversial issues."<sup>20</sup> Leaving aside the fact that Petitioner has not made any showing of such a "flat refusal" by WFOR, the approach that Petitioner asks the Commission to "craft" is virtually identical to the so-called "first prong" of the fairness doctrine, which required that "broadcasters provide coverage of important

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<sup>16</sup> 867 F.2d 654 (D.C. Cir 1989), *cert. denied*, 493 U.S. 1019 (1990) (hereafter "*Syracuse Peace Council*").

<sup>17</sup> 801 F.2d 501 (D.C.Cir. 1986), *reh'g en banc denied*, 806 F.2d 1115, *cert. denied*, 482 U.S. 919 (1987) (hereafter "*TRAC*").

<sup>18</sup> *Syracuse Peace Council*, *supra*, 867 F.2d at 657, n.1.

<sup>19</sup> Petition at 5.

<sup>20</sup> *Id.* at 7.

controversial issues of interest to the community they serve.”<sup>21</sup> That part of the fairness doctrine, as well as the more familiar requirement that contrasting views be presented on controversial issues that a broadcaster chose to cover, was also repealed by the Commission, with its elimination being affirmed by the Court of Appeals.<sup>22</sup> Accordingly, just as the petitioners in *Syracuse Peace Council* -- in arguing that the fairness doctrine inhered in the public interest standard of the Communications Act -- effectively asked the D.C. Circuit to overturn its prior holding that the doctrine was not statutorily mandated, the UCC in this case seeks the Commission’s reinstatement of the first prong of the fairness doctrine on the ground that it is required by the statute after all. The Commission’s response to UCC’s circular and illogical argument must be the same as that afforded by the Court of Appeals to the petitioners in *Syracuse Peace Council* -- i.e., summary dismissal.

In sum, the instant Petition reflects nothing more than UCC’s determination to inflict some penalty on Licensee -- even if mere inconvenience -- for the CBS Television Network’s decision not to broadcast its advertising. We respectfully suggest that not only should the Petition be dismissed, but UCC should be rebuked for making a wholly frivolous filing.

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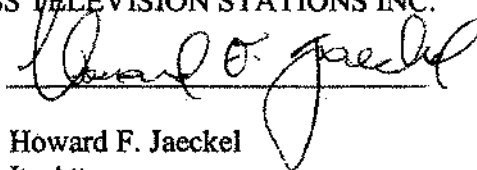
<sup>21</sup> *Syracuse Peace Council, supra*, 867 F.2d at 666-67.

<sup>22</sup> *Id.* at 666-69.

Respectfully submitted,

CBS TELEVISION STATIONS INC.

By

A handwritten signature in dark ink, appearing to read "Howard F. Jaeckel", written over a horizontal line.

Howard F. Jaeckel  
Its Attorney

1515 Broadway  
New York, New York 10036

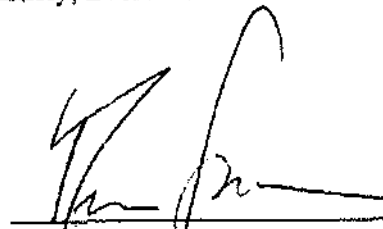
January 10, 2005

DECLARATION

DENNIS SWANSON, under penalty of perjury, declares and states as follows:

1. I am the Chief Operating Officer of the Viacom Television Stations Group ("VTSG"), a business unit of Viacom Inc. ("Viacom"). WFOR-TV, Miami, Florida, operates as part of VTSG, and is licensed to CBS Television Stations Inc. ("CBS"), a wholly-owned subsidiary of Viacom.

2. To the best of my information and belief, the statements made in the attached "Opposition of CBS Television Stations Inc. to Petition to Deny" (the "Opposition") are true and correct. The statements made on page 3 of the Opposition regarding phone conversations I had with officials of the United Church of Christ -- namely, Everett Parker and Bob Chase -- are true and correct as of my personal knowledge.

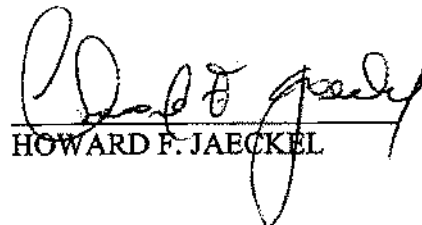
  
DENNIS SWANSON

January 10, 2005

DECLARATION

HOWARD F. JAECKEL, under penalty of perjury, declares and states as follows:

1. I am Vice President, Associate General Counsel, CBS Broadcasting Inc. ("CBS").
  2. In that capacity, I am familiar with the facts and circumstances discussed in the attached "Opposition of CBS Television Stations Inc. to Petition to Deny."
- To the best of my information and belief, the statements made therein are true and correct.

  
HOWARD F. JAECKEL

January 10, 2005

## **CERTIFICATE OF SERVICE**

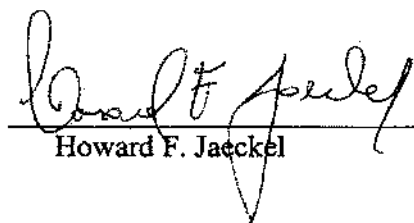
I, Howard F. Jaeckel, hereby certify that on this 10<sup>th</sup> day of January, 2005, I caused copies of the foregoing "Opposition of CBS Television Stations Inc. to Petition to Deny" to be served by U.S. First Class Mail, postage prepaid, on:

Andrew Jay Schwartzman, Esq.  
Media Access Project  
Suite 1000  
1625 K Street, NW  
Washington, DC 20006

I also certify that, on the same day, I caused said Opposition to be filed with, and served on, the following by hand delivery:

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, N.W.  
Washington, D.C. 20554

Barbara Kreisman, Chief  
Video Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, N.W.  
Washington, D.C. 20554



Howard F. Jaeckel

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, DC 20554**

In re Application of	)	
CBS Television Stations, Inc.	)	BRCT-20041001AJQ
for Renewal of WFOR-TV, Miami Florida	)	

In re Application of	)	
NBC Telemundo License Co.	)	BRCT-20041001ABM
for Renewal of WTVJ, Miami Florida	)	

**REPLY TO OPPOSITIONS TO PETITIONS TO DENY RENEWAL**

The United Church of Christ ("UCC") respectfully responds to the oppositions submitted in these two proceedings by NBC Telemundo License Co. and CBS Television Stations, Inc.<sup>1</sup>

**INTRODUCTION**

As UCC has set forth in its *Petitions to Deny*, UCC has embarked on an identity campaign in which national TV advertising is an integral part.

Notwithstanding the refusal of the CBS and NBC networks to carry all of its advertisements, UCC's "God is Still Speaking" theme has far exceeded expectations. UCC congregations have reported unprecedented response. The letters in Exhibit A show that the "God is Still Speaking" campaign has motivated existing members of UCC congregations,<sup>2</sup> has generated many new members,<sup>3</sup> and changed lives.<sup>4</sup> According to the Rev. Robert Chase, Director of Communication of

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<sup>1</sup>By letter dated January 24, 2005, counsel for UCC submitted an uncontested request for a one week extension of time, through and including February 7, 2005, within which to submit this reply.

<sup>2</sup>For example, the Emmaus United Church of Christ in Vienna, VA reports that its 280 member congregation raised \$2500 for a local campaign over just a few days.

<sup>3</sup>For example, the Pilgrim Congregational Church in Cleveland, OH reported that, since the campaign began, Sunday morning attendance has risen from 230 to 275, and that it "will have received over 15 new members as well." The United Church of Christ of Chapel Hill (NC) reported that attendance rose from 384 to 519 in one month, and that the congregation recorded at least 30

the United Church of Christ, visitors to UCC's website tripled during the "God is Still Speaking" TV ad campaign. See Exhibit B.

It is of particular significance to this petition that the same advertisements that the CBS and NBC networks rejected have run on more than a dozen TV stations (for test marketing) and several cable networks as well as the Fox network. To the best of UCC's knowledge, there has not been a *single* viewer objection received to date.

CBS states, correctly, that it has "invited UCC to submit the commercial to individual Viacom owned stations, including, WFOR-TV." *CBS Opposition* ("CBS Opp.") at 3. This, by itself, means very little; after all, the CBS network also "invited UCC to submit the commercial..." and then declined to carry it. More fundamentally, however, as UCC explained, *WFOR-TV Pet.* at 3, n. 2, the issue here is the practices of the commonly owned CBS network, not the individual stations. UCC has attempted to mount a national campaign, and it is impossible to do this effectively without using the major national networks. As the Commission has found,

Network advertising provides audience reach unmatched by any other broadcasting medium. No single cable channel today provides the audience reach of any television network. Only network television is a *mass-distribution* venue for programming and advertising, notwithstanding the continuing erosion of network television audience attributable to the growth of cable and DBS viewership.

*Amendment of Section 7658(g) of the Commission's Rules*, 11 FCCRcd 11253, 11257 (2000) (footnotes omitted) (emphasis in the original). UCC seeks to reach specific audiences and demo-

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new members during that period.

<sup>4</sup>The First Congregational, United Church of Christ in Boulder, CO, reports that the "God is Still Speaking" campaign has brought immense relief to a man who recently had a stroke.



graphics. *Cf.*, *Becker v. FCC*, 95 F.3d 75 (D.C. Cir. 1996).<sup>5</sup> In addition, a campaign like UCC's involves cross-promotion, in which the broadcast of TV ads at particular times is publicized, and members are urged to watch. This cannot be done effectively when ads appear at different times on different stations. Moreover, as UCC has explained, it must take special care as to program adjacencies for its commercials. *WFOR-TV Pet.* at 3, n 2. Since most of the inventory is controlled by the networks, and local stations have often presold certain availabilities to favored local advertisers, many specific time slots can only be obtained through a network buy. And, according to Rev. Chase,

More than fifteen million viewers cannot afford or do not have access to cable television. Our strategy to purchase air time on broadcast networks has been, from the beginning, a question of justice—ensuring that our viewing audience would be as wide as possible. Continued failure to clear this commercial leaves many citizens disenfranchised, limits the service that our congregations can provide to their communities, and runs counter to the broadcast networks' responsibility as stewards of the public trust.

Exhibit B.

In short, UCC's advertising is unobjectionable, and it works. The harm that UCC has incurred from being denied access to the unique reach of major network television is significant.

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<sup>5</sup>Discussing the same question as applied to political candidates, the Judge Buckley explained that declining to sell particular time slots

is apt to deprive a candidate of particular categories of adult viewers whom he may be especially anxious to reach. It is common knowledge that campaign strategists rely on survey research to target specific voting groups with television advertisements. *See generally* Dan Koeppe, *The High-Tech Election (of 1992)*, Brandweek 18, Mar. 2, 1992. We can surmise, for example, that early shift factory workers whom a candidate wishes to reach are not apt to stay up beyond their normal bedtimes just to see his political advertisements. Thus, the ruling creates a situation where a candidate's ability to reach his target audience may be limited and his "personal campaign strategies ... ignored." *See CBS, Inc. [v. FCC]*, 453 U.S. [367] at 389 [1981].

*Id.*, 95F.2d at 91.

## JURISDICTIONAL ISSUES

The two networks raise several issues which, they contend, make it unnecessary to consider the merits of UCC's petition to deny.

CBS, which complains that UCC's petition is "wholly frivolous," *CBS Opp.* at 9, starts with extraordinarily tenuous legal argument. It claims that UCC "cannot meet the requirements of Section 309 of the Act for stating a *prima facie* case" because it has not alleged that CBS has committed a "serious violation of the Communications Act." *CBS Opp.* at 2 and 8 (*citing* 47 USC §309(k)).

This is simply wrong. Section 309(k) sets forth three bases for petitions to deny *in the conjunctive*. To grant an application, the Commission must find that there have been no serious violations of the Act or the FCC's rules, that there is no pattern of abuse in such violations *and* that "the station has served the public interest, convenience and necessity." Clearly, then, UCC need only show that the applicants have not shown that grant of their applications is in the public interest. There are innumerable circumstances that would support such a finding even though there is no specific violation of a particular agency rule or policy. For example, the Commission could find that an applicant lacks the requisite character to serve as a broadcast licensee. *Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000). This is not a "violation" of the Communications Act, but it does preclude the Commission from making the finding required by 47 USC §309.<sup>6</sup> Similarly, the Commission may be unable to make the necessary public interest finding where an applicant is otherwise in compliance with relevant local ownership rules but has attained an excessive share of the local advertising market. *See Air Virginia, Inc.*, 15 FCCRcd 5423, 5428 (2002) (designating hearing

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<sup>6</sup>47 USC §308(b) requires applicants to file information pertaining to their character. An applicant lacking requisite character does not "violate" Section 308 so long as it truthfully provides the necessary information. Its disqualification is part of the Commission's public interest determination under Section 309(k).

where applicant was in compliance with local ownership rules but would obtain excessive control of the local advertising market).

CBS, joined by NBC, also ventures the plainly incorrect claim that conduct of a network is not cognizable in considering the application for renewal of one of its owned-and-operated stations. *CBS Opp.* at 2; *NBC Opposition* (“*NBC Opp.*”) at 5. CBS is well aware that the Supreme Court has held that the conduct of a network is “reasonably ancillary” to the effective enforcement of the Communications Act to individual licensees. *CBS, Inc. v. FCC*, 453 U.S. at 391 n. 14. Moreover, while Section 309(k) requires the Commission to make findings “with respect to that station” for which the application was filed, the Commission has repeatedly held that the conduct of network management officials, and specifically CBS officials, “can fairly be attributed to the licensee. *Serafyn v. FCC*, 149 F.3d 1213, 1221 (D.C. Cir. 1998) (citing *Hunger in America*, 20 FCC2d 143, 150 (1969), a case involving a CBS documentary). See also, *Faulkner Radio, Inc.*, 88 FCC2d 612 (1981) (establishing precedential criteria for determining when misconduct at one station bears on a licensee’s fitness to retain its other stations).

CBS also contends that it is inappropriate for the Commission to establish policy in an adjudicatory case, and that the issue UCC has raised is best considered in a rulemaking. This is simply not germane to the issue immediately before the Commission, which is whether these applications can be granted on the basis of the record. It is probably true that, in the event that the Commission finds that the current applications are not in the public interest, the Commission would do well thereafter to use its policymaking powers to give guidance for applying such a precedent.<sup>7</sup>

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<sup>7</sup>Indeed, that is precisely what the Commission did in assessing the basic qualifications of licensees whose character has been placed at issue:

For many years, the FCC had no express policy concerning the character qualifications of its applicants;...and as a consequence its evaluations sometimes yielded inconsistent results. See *Policy Regarding Character Qualifications in Broadcast Licensing*, 87 FCC2d 836, 836-37

Finally, NBC argues that adoption of the remedy UCC seeks would improperly give voice only to those with deep pockets. *NBC Opp.* at 8. Given the difficulties UCC has faced in raising money for its identity campaigns, the notion that UCC has deep pockets is odd. That aside, the argument is a really just another policy matter relating to how the FCC implements its decisions, rather than a limitation on the Commission's power or duty to act. Moreover, it is well within the discretion of NBC and others to address this problem by giving free time for the discussion of issues as necessary to assure that the public is not left uninformed. And it is clear that the Commission has the authority to include such a provision in any policies it may subsequently adopt as it refines its access policies. *See Cullman Broadcasting Co.*, 40 FCC 576 (1963).<sup>8</sup>

### THE MERITS

CBS and NBC quibble with UCC's legal argument, but they do not confront it directly. In particular, they do not disagree with the core of UCC's argument, namely that no FCC or judicial authority has addressed the right to purchase time "for the carriage of controversial issues under the public interest standard in the absence of the Fairness Doctrine." *WFOR-TV Petition* at 5, *WTVJ Petition* at 5.

The crux of UCC's argument is that the Supreme Court's decision in *CBS v. DNC* was predicated on the existence of the Fairness Doctrine, and that the Supreme Court contemplated that there

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(1981) (notice of inquiry). The Commission responded to this problem in 1986 with the adoption of a comprehensive character policy statement. *See Policy Regarding Character Qualifications in Broadcast Licensing*, 102 F.C.C.2d 1179 (1986)....  
*Contemporary Media, Inc. v. FCC*, 214 F.2d at 191-192.

<sup>8</sup>NBC's suggestion, *NBC Opp.* at 13, n. 36, that UCC's petition raises an establishment clause issue does not merit serious discussion. Viewpoint neutral policies do not raise First Amendment problems. Surely, NBC would not suggest that the Commission is unable to award licenses to religious institutions. It follows that the sale of time to a religious organization similarly would not violate the establishment clause. *See also, 1960 Programming Statement*, 44 FCC 2303, 2314 (1960) (recognizing that religious programming is an element of service in the public interest).

is room for Congress or the FCC to establish limited access rights. *WFOR-TV Petition* at 8; *WTVJ Petition* at 8 (both citing *CBS v. DNC*, 412 U.S. 94, 131).

CBS argues that the Fairness Doctrine was not essential to the Supreme Court's holding in *CBS v. DNC*. As proof, it refers to the fact that the Supreme Court noted that Congress had "time and again" refused to provide access rights in the 1934 Act. CBS Opp. at 7. This hardly proves CBS' point, as can be seen from the two sentences following the phrase it quotes. The entire passage reads as follows:

As we have seen, Congress has time and again rejected various legislative attempts that would have mandated a variety of forms of individual access. That is not to say that Congress' rejection of such proposals must be taken to mean that Congress is opposed to private rights of access under all circumstances. Rather, the point is that Congress has chosen to leave such questions with the Commission, to which it has given the flexibility to experiment with new ideas as changing conditions require.

*CBS v. DNC*, 412 U.S. at 122. The issue here is whether the FCC has the power to create an access right, not whether Congress has previously provided such a right. As this passage shows, the Supreme Court clearly contemplated that the FCC has the "flexibility to experiment with new ideas as changing conditions require." UCC's contention is that non-enforcement of the Fairness Doctrine is such a "changing condition," and that the FCC has the power to remediate the damage UCC has faced by "experimenting" with a new access right.

NBC makes a similar argument, stating that Congress refused to require that "broadcast facilities should be open on a nonselective basis to all persons wishing to talk about public issues." *NBC Opp.* at 7 (citing *CBS v. DNC*, 412 U.S. at 105). It notes that Congress has refused to make broadcasters common carriers. *Id.*

This proves far too much. The access rights which Congress declined to provide were common carriage rights. *CBS v. DNC*, 412 U.S. at 106-109. UCC is not asking for a broad "nonse-

lective” access right. Rather, it seeks a limited and highly targeted access right directed at the narrow circumstance when a broadcaster shuts off discussion of an issue which goes to the heart of its responsibilities to its community of license. And it most certainly is not asking for a common carriage scheme; UCC’s argument is tied to the parent company’s obligation to give close scrutiny to its programming practices and the exercise of discretion to assure that the community’s needs are met. This is the antithesis of common carriage.

With respect to NBC’s suggestion, *NBC Opp.* at 13, that UCC’s suggested approach presents First Amendment problems, the fact is that it is the failure to afford access to UCC that limits UCC’s First Amendment rights to speak and to be heard. It is particularly troubling that NBC, which is licensed to serve as a proxy for the entire community, refused to air UCC’s advertisement because it “concluded that the ‘Night Club’ ad *inappropriately* suggested that churches other than the UCC are not open to people of diverse races and backgrounds.” *NBC Opp.* at 2 (emphasis added).

## CONCLUSION

Wherefore, the Commission should recognize a limited right of access under the circumstances presented here, designate a hearing to consider whether grant of the WFOR-TV and WTVJ renewal applications are in the public interest, and grant all such other relief as may be just and proper.

Respectfully submitted,

Angela J. Campbell  
Institute for Public Representation  
Georgetown University Law Center  
Suite 312  
600 New Jersey Avenue, NW  
Washington, DC 20001  
(202) 662-9535

February 7, 2005

Andrew Jay Schwartzman  
Media Access Project  
Suite 1000  
1625 K Street, NW  
Washington, DC 20006  
(202) 232-4300

*Counsel for the United Church of Christ*

# EXHIBIT A



January 31, 2005

# UNITED CHURCH OF CHAPEL HILL

1321 Airport Road,  
Chapel Hill, NC 27514  
919.942.3540  
nech@unitedchurch.org  
www.unitedchurch.org

*Pastors*  
Jill & Richard Edens

*Associate Pastor*  
Heather Dillashaw

*Director of*  
*Children's Ministries*  
Susan E. Steinberg

*A Congregation of the*  
*United Church of Christ*



Ms. Barb Powell  
United Church of Christ - PIC  
(Proclamation, Identity, and Communication Ministry)  
700 Prospect Ave E  
Cleveland, OH 44115-1100

Dear Ms. Powell:

United Church of Chapel Hill is grateful to the larger church for the Still Speaking Initiative and particularly the advertising that our community experienced last Lent and then again during Advent. The "bouncer ad" clearly spoke to people and, metaphorically, to a real or perceived past experience of a religious community.

The expression of tolerance and inclusion as a religious value was received well by our congregation and the community. The ad was well received by members of the congregation and became the catalyst for conversations with friends, neighbors and colleagues. We crafted bus posters to accompany the television advertising that were well-received. The attached editorial from the community newspaper, The Chapel Hill News, may express the community's reception of the bouncer better than I can.

We gather information every Sunday in order to be hospitable to those who worship with us and to recognize trends within our common life. Recognizing that the offering of one's name is voluntary and the counting by the ushers is not exact, our Sunday worship attendance during the four Sundays of Advent (2004) was as follows:

Sunday	Nov. 28	Dec. 5	Dec. 12	Dec. 19
Total attendance	384	481	521	519
Members	289	388	410*	415
First-Time Attenders	16	9	22	7
Friends	66	79	74 *	85
Guests	13	5	15	12

\* On December 12, 36 persons who previously would have been recorded as Friends united in membership thus they are now counted as Members.

Once again, thank you for the positive impact of the identity campaign. Our congregation was appreciative of this campaign.

Grace and peace,

Richard Edens

*To Believe Is To Care, To Care Is To Do*



Editorial, December 5, 2004

*Chapel Hill News*

The most chilling thing about the rejection by national networks NBC and CBS of commercials for the United Church of Christ is the reason articulated by CBS.

According to the national UCC office, CBS provided this written explanation: "Because this commercial touches on the exclusion of gay couples and other minority groups by other individuals and organizations and the fact that the Executive Branch has recently proposed a constitutional amendment to define marriage as a union between a man and a woman, this spot is unacceptable for broadcast."

This explanation is astounding (1) because the Viacom-owned network seems to be blatantly nodding to the wishes of the "Executive Branch," and (2) the commercial says nothing at all about gay marriage. The reasoning makes a leap that is completely out of bounds.

NBC, owned by General Electric, described the ad as "too controversial."

The scene: Bouncers stand at the door of a generic church welcoming some people in and turning away others. Among those turned away are two men holding hands. Others include a young black girl, a Hispanic man and a person in a wheelchair.

The image gives way to the message: "Jesus didn't turn people away. Neither do we."

According to the Rev. Rick Edens of the United Church of Chapel Hill, the target audience for this ad is people who feel unwelcome in any church for whatever reason. It is based on responses of non-churchgoing people in focus groups.

The UCC denomination has a long-standing tradition of inclusiveness. It has been out front, both in terms of the Civil Rights struggle of the '60s and in the gay/lesbian struggle now in the forefront. Its logo is "That they may all be one."

In this community, United Church of Chapel Hill has carried out that mission in a number of ways, including providing a home for a Hispanic congregation and forming a gospel choir with a black church in Durham. Its membership includes people of color and openly gay and lesbian members. It hosts inter-faith services and strives to inform its members about the tenets of other faiths, including Muslim.

In a 30-second spot intended to define the character and distinction of the denomination, United Church of Christ naturally reflected one of its most defining qualities. It should be allowed to do that.

This action of the national networks follows the decision of local NPR affiliate WUNC not to accept the language of sponsor Ipas as being an organization that protects women's "reproductive rights." That is a definition, not a political statement. Even if it does resonate with some as "abortion rights," those rights do, in fact, exist in this country -- at least for the time being.

For the United Church of Christ to define itself as welcoming of all people, including gays and lesbians, is descriptive, not political.

It's a concern that these organizations are not allowed to represent themselves in language they find accurate when drug companies can hawk one drug as being better than others, without substantiation; when Wal-Mart can describe itself as a caring company to work for, though it has claims against it for discriminating against women. The list is endless.

The self-censorship -- and we have to hope that it is not more than that -- seems to reflect a political and business climate that is highly sensitive to the agenda of the newly empowered right wing. This could be just the beginning.

An interesting aside: The ads were aired in this market and other test markets throughout the country in the spring, with no negative reaction. Following the pattern of other controversial acts of censorship, they've attracted considerably more attention because they won't be seen on NBC and CBS than they would have if they had been aired.

Look for them on the host of cable and other channels -- that will carry them, and decide for yourself. Too controversial?

[http://archives.newsbank.com/var-search/we/Archives?p\\_action=doc&p\\_docid=106D34137193fC15&p\\_docnum=1&s\\_did=0L0105013116134917045&s\\_subterm=Subscription%20until%3A%2012%2F31%2F2010%203%3A64%20PM&s\\_subexpires=12%2F31%2F2010%203%3A64%20PM&s\\_username=mo0315](http://archives.newsbank.com/var-search/we/Archives?p_action=doc&p_docid=106D34137193fC15&p_docnum=1&s_did=0L0105013116134917045&s_subterm=Subscription%20until%3A%2012%2F31%2F2010%203%3A64%20PM&s_subexpires=12%2F31%2F2010%203%3A64%20PM&s_username=mo0315)

FEB-04-2005 16:07

## EMMAUS UNITED CHURCH OF CHRIST

900 EAST MAPLE AVENUE  
VIENNA, VIRGINIA 22180

Rev. William T. Federici  
SENIOR MINISTER

PHONE: 703-938-1555

FAX: 703-242-8178

WWW.EMMAUS-VA.ORG  
billyflax@mac.com

Emmaus United Church of Christ is a progressive, inclusive spiritual community located in Vienna, Virginia, serving the greater McLean, Tyson's Corner and Fairfax County area.

Over the past year and a half, the congregation has done an intensive and intentional examination of how we embody the ethos, practice and theology of the United Church of Christ. Many of our members have served the larger Church at Association and Conference levels. Here are some facts and observations regarding our involvement with the Still Speaking Initiative.

The congregation has been proud that I have been the Coordinator for the Still Speaking Initiative in Central Atlantic Conference, urging me to spend as much time as necessary to ensure a successful project.

When the television commercials were aired in December, the news that the bouncer ad had been banned on CBS and NBC was greeted with a sense of bewilderment and outrage. In this metropolitan D.C. area, freedom of speech is taken very seriously as many of our members work for government and other agencies.

We "passed the plate" to support the local effort of Potomac Association to run ads and identity pieces in the local press. A 280 member congregation raised \$2500.00 in one service and a few days.

Since the ad has run, the Membership Committee has been asked to host another Conversation on Membership for the people who have been attending in the late fall. Many of these prospective new members feel swept into a momentum of taking a stand for progressive inclusivity. We have seen many new visitors since December. This class contains over 15 prospective new members.

I have been chairing the Potomac Working Group for Still Speaking as well, as part of my Conference responsibility. A consortium of lay people and clergy have been developing a longer term strategy for communication and identity in addition to ads running in local media. We are also hosting a group website ([stillspeakingmetrodc.org](http://stillspeakingmetrodc.org)) which has experienced many hits during the ad campaign.

Although Emmaus is in a metropolitan area that is fairly "liberal", we are part of a larger Commonwealth which has passed legislation that would seek to discriminate people by sexual orientation on a number of issues. There has been a pride in the commercial which posits an image of a denomination which welcomes all.

As time goes on, there will be more stories and facts to share. The bottom line is that Emmaus United Church of Christ is thrilled to extend an extravagant welcome in the name of the Gospel of Jesus Christ.

Peace to you,

Rev. William T. Federici



# Pilgrim Congregational Church

A Just Peace & Open and Affirming Congregation of the United Church of Christ  
2592 West 14th Street • Cleveland, Ohio 44113 • 216.861.7388 • Fax 216.861.0113  
Visit us on the web at [pilgrimlive.org](http://pilgrimlive.org)

## MINISTERS

ALL MEMBERS OF THE CHURCH

## PASTORS

THE REV. DR. LAURINDA HARNER  
[LAURINDA@PILGRIMLIVE.ORG](mailto:LAURINDA@PILGRIMLIVE.ORG)

THE REV. KATHRYN MATTHEWS HUBY  
PASTOR FOR THURSDAY WORSHIP AND  
GUEST MINISTERS

## CHILDREN AND YOUTH MINISTERS

MR. VICKI MCGAW  
[VICKIM@PILGRIMLIVE.ORG](mailto:VICKIM@PILGRIMLIVE.ORG)

## PARTY NURSE

MR. JUDE JOHANSEN, R.N.

## CHURCH ADMINISTRATOR

MR. JERRY GUMBY  
[JERRYG@PILGRIMLIVE.ORG](mailto:JERRYG@PILGRIMLIVE.ORG)

## ASSISTANT TO DR. HARNER

MR. JOAN MCCORTY  
[JOANM@PILGRIMLIVE.ORG](mailto:JOANM@PILGRIMLIVE.ORG)

## Home To

ANTHONY DANCE COMPANY  
216.965.3137

ARTS RENAISSANCE TRIMONT  
216.861.4887

FULL CIRCLE THEATRE  
216.736.2180

INTERFAITH HOSPITALITY NETWORK  
FAMILY CENTER  
216.771.9600

KENYETTA DANCE THEATRE  
216.348.3211

NORTHCOAST MEN'S CHORUS  
216.227.0773

MERRICK HOUSE  
SCHOOL ADR DAY CARE  
216.771.6239

THE GATHERING  
A WELLNESS CENTER  
216.861.7388 EXT. 23

THE UCC COALITION FOR LOST CONCERNS  
216.861.0779

February 3, 2005

The Stillspeaking Initiative Ministry  
700 Prospect Avenue  
Cleveland, Ohio 44115

Dear Friends:

This letter comes with deep appreciation and gratitude for the amazing revival you have initiated in the life of our church and in our denomination through the God is Still Speaking Campaign. This edgy, creative, and innovative program has brought new life and vitality to our local church, and I sense a real renewal within the United Church of Christ.

At Pilgrim Congregational UCC, an urban congregation in Cleveland, Ohio, where I serve as pastor, we have realized some amazing results that we directly attribute to the campaign. First and foremost, has been the incredible number of visitors that have come to worship with us since the commercials first aired. Our average Sunday morning attendance one year ago was 230 – since the campaign began, we now average 275! Using the new God is Still Speaking pew pads, we are able to determine that many of these first-time visitors have come because they have either seen or heard about the commercials. By the end of this February, we will have received over 15 new members as well.

One of the most interesting benefits however, has been the renewed sense of enthusiasm and appreciation by those who are already Pilgrim members, for the United Church of Christ. There is a deep sense of pride by so many of our members for "their" denomination, that is willing to make such a bold witness for the sake of the gospel of Jesus Christ. I see "God is Still Speaking" t-shirts, bumper stickers, and hats everywhere around Pilgrim! It is truly amazing to watch folks come alive with joy for their church, both locally and nationally.

To say I am a big fan of this campaign, is an understatement. On a very personal note, as a life-long member of the United Church of Christ, I can't think of a time that I have been more proud and more committed about the denomination. Thank you for bringing such hope, excitement, and revitalization into our church!

Most sincerely,

Laurinda Harner

FEB. 7.2005 9:59AM

NO.259 P.1.



Pharmaceuticals

Twelve days ago I received a call from the associate minister at First Congregational, United Church of Christ in Boulder and he asked me to pay a visit to a gentleman in the hospital who had suffered a stroke twelve days prior to his call. I am the chair of the board of spiritual life, a former fundamentalist minister, and help lead up our GLBTQ fellowship.

This gentleman was able to worship with us this last Sunday and is making a wonderful recovery from his medical problems. In the last six months his son was killed in Iraq, his marriage is in the process of ending, and he suffered a stroke while apartment hunting in Boulder to start his new life. He was on assignment as a paralegal in Texas for the past eight months where he saw the commercials that UCC had put out and when he got settled in his new place he wanted to call one of our churches and be apart of a fellowship that would accept him as he is and where he is currently in his journey. He was raised as a catholic and was never able in his religious tradition to be the authentic creation that he is and he saw in the commercials that everyone was welcome in our fellowship. A few days after his stroke (he received amazing medical treatment helped him almost miraculously compared to most stroke patients) he looked up the number to our church and called and said he would love to have someone visit him. The associate minister responded by phone and later in person and then called me to follow up. I see how God works in the most amazing ways. How a commercial seen in Texas and felt in someone's heart, responded to in Boulder, and we are now enriched with another wonderful person on his continued journey with God.

Thank you

John Bisceglia  
[john.bisceglia@roche.com](mailto:john.bisceglia@roche.com)  
Phone 303 938 6660  
Fax 303 938 6497

# EXHIBIT B



## Office of General Ministries A Covenanted Ministry of the United Church of Christ

John H. Thomas, General Minister and President  
Edith A. Guffey, Associate General Minister

February 7, 2005

### The Collegium of Officers

John H. Thomas  
Office of General Ministries

Edith A. Guffey  
Office of General Ministries

Bernice Powell Jackson  
Office and Witness Ministries

José A. Malayanq  
Local Church Ministries

Dale L. Bishop  
Water Church Ministries

This correspondence is to offer a summary report as to the effectiveness of the identity campaign of the United Church of Christ, including its television advertising, which is at the core of the effort.

The response to the "God is Still Speaking," initiative has been unprecedented. Numbers begin to tell the story:

Since launching this effort, our web sites ([www.ucc.org](http://www.ucc.org) and [www.stillspeaking.com](http://www.stillspeaking.com)) have had more than one million visits. 170,000 visitors have used the "find-a-church" feature. In December, while the ads were running, we had 787,056 visits to our web sites; 137,000 used the find-a-church function. By comparison, in November, 230,000 visitors came to our sites and 4,000 used our find-a-church function.

Anecdotal evidence is coming in from all over the country about increases in worship attendance and giving. But numbers only begin to tell the story. Enthusiasm generated within our membership because of this initiative has vitalized our congregations, prompting an outpouring of generosity and service to those in need in the communities in which these congregations are located, and to the wider world.

While the controversy surrounding NBC and CBS's refusal to clear the commercial has brought an increase in name recognition for the UCC, we regret that this refusal has kept countless Americans from seeing our message of extravagant welcome. More than fifteen million viewers cannot afford or do not have access to cable television. Our strategy to purchase air time on broadcast networks has been, from the beginning, a question of justice—ensuring that our viewing audience would be as wide as possible. Continued failure to clear this commercial leaves many citizens disenfranchised, limits the service that our congregations can provide to their communities, and runs counter to the broadcast networks' responsibility as stewards of the public trust.

The Rev. Robert Chase  
Director of Communication  
United Church of Christ

700 Prospect Avenue, Cleveland, Ohio 44115-1100 -- Phone 216.736.2100 -- Fax 216.736.2103  
E-mail [ngm@ucc.org](mailto:ngm@ucc.org) -- Web [www.ucc.org](http://www.ucc.org)

### **CERTIFICATE OF SERVICE**

I, Paula Galloway, hereby certify that on this 7<sup>th</sup> day of February 2005, a copy of the foregoing *Reply to Oppositions to Petitions to Deny Renewal* was served by first-class mail, postage prepaid, upon the following:

Margaret L. Tobey  
Morrison & Foerster  
Suite 5500  
2000 Pennsylvania Avenue, NW  
Washington, DC 20006

F William LeBeau  
Regulatory Counsel  
NBC Telemundo License Co.  
11th Floor, West  
1299 Pennsylvania Avenue, NW  
Washington, DC 20004

Howard F. Jaeckel  
CBS Television Stations, Inc.  
1515 Broadway  
New York, NY 10036

\_\_\_\_\_  
Paula Galloway